

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Leanne Fornelli	Team: Squad #8	CCRB Case #: 201501468	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 02/27/2015 5:30 PM	Location of Incident: Hoyt/Schermerhorn A/C/G subway station; Transit District 30 stationhouse	Precinct: 84	18 Mo. SOL 8/27/2016	EO SOL 8/27/2016	
Date/Time CV Reported Sat, 02/28/2015 1:19 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sat, 02/28/2015 1:19 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An officer			TB DT30
2. POM Lyndon Providence	19061	927377	TB DT30
3. LT Michael Catusco	00000	892873	TB DT30
4. POM Thomas Marksberry	28033	927605	TB DT30
5. LT Timothy Harrington	00000	917095	TB DT30

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Dana Davis	31241	936438	TB DT30

Officer(s)	Allegation	Investigator Recommendation
A.LT Michael Catusco	Abuse: At the Hoyt/Schermerhorn A/C/G subway station, Lt. Michael Catusco stopped § 87(2)(b)	
B.LT Michael Catusco	Abuse: At the Hoyt/Schermerhorn A/C/G subway station, Lt. Michael Catusco threatened to arrest § 87(2)(b)	
C. An officer	Force: At the Hoyt/Schermerhorn A/C/G subway station, an officer used physical force against § 87(2)(b)	
D. An officer	Force: At the Hoyt/Schermerhorn A/C/G subway station, an officer used pepper spray against § 87(2)(b)	
E.POM Lyndon Providence	Force: At the Hoyt/Schermerhorn A/C/G subway station, PO Lyndon Providence used a chokehold against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
F.POM Lyndon Providence	Force: At the Hoyt/Schermerhorn A/C/G subway station, PO Lyndon Providence restricted § 87(2)(b)'s breathing.	
G.POM Lyndon Providence	Force: At the Hoyt/Schermerhorn A/C/G subway station, PO Lyndon Providence used physical force against § 87(2)(b).	
H.POM Lyndon Providence	Force: At the Transit District 30 stationhouse, PO Lyndon Providence used physical force against § 87(2)(b).	
I.POM Lyndon Providence	Discourtesy: At the Transit District 30 stationhouse, PO Lyndon Providence spoke discourteously to § 87(2)(b).	
J.POM Lyndon Providence	Abuse: At the Transit District 30 stationhouse, PO Lyndon Providence damaged § 87(2)(b)'s property.	
K.POM Lyndon Providence	Abuse: At the Transit District 30 stationhouse, PO Lyndon Providence threatened § 87(2)(b) with the use of force.	
L.LT Timothy Harrington	Abuse: At the Transit District 30 stationhouse, Lt. Timothy Harrington threatened § 87(2)(b) with the use of force.	
M.POM Thomas Marksberry	Discourtesy: At the Transit District 30 stationhouse, PO Thomas Marksberry spoke discourteously to § 87(2)(b).	
§ 87(4-b), § 87(2)(g)		

### Case Summary

On February 28, 2015, § 87(2)(b) filed this complaint with the Civilian Complaint Review Board (CCRB) via the call processing system on behalf of his son § 87(2)(b) and he did not witness the incident. On February 27, 2015, at 5:30 p.m. (time established from NYPD Event D15022717984; encl. O1-O3), at the Hoyt/Schermerhorn A/C/G subway station in Brooklyn, § 87(2)(b) was arrested with a top charge of assault (intent to cause physical injury to an officer) by officers of Transit District (TD) 30 (encl. J8-J12). The following was alleged: At the Hoyt/Schermerhorn A/C/G subway station, Lt. Michael Catusco stopped § 87(2)(b) and threatened his friend § 87(2)(b) with arrest (**Allegations A and B**). An officer used physical force and pepper spray against § 87(2)(b) (**Allegations C and D**). PO Lyndon Providence used a chokehold against § 87(2)(b) thereby restricting his breathing, and used physical force against him (**Allegations E, F and G**). At the TD 30 stationhouse, PO Providence used physical force against and spoke discourteously to § 87(2)(b) (**Allegations H and I**). PO Providence damaged § 87(2)(b)'s property and threatened him with the use of force (**Allegations J and K**). Lt. Timothy Harrington threatened § 87(2)(b) with the use of force (**Allegation L**). PO Thomas Marksberry spoke discourteously to § 87(2)(b) (**Allegation M**). Lt. Harrington did not bring his memo book to the CCRB (**Allegation N**).

### Video Footage

On March 12, 2015, § 87(2)(b) emailed the undersigned investigator video footage of a portion of the incident taken by § 87(2)(b) (last name unknown; see Additional Witnesses section below). The video is accessible in Investigative Action (IA) 13. Video was also subpoenaed and received from MTA, but contained no footage that could be analyzed as evidence.

### Mediation, Civil and Criminal Histories

- This case was ineligible for mediation due to § 87(2)(b)'s arrest resulting from the incident (encl. J8-J12).
- § 87(2)(b) has filed no notice of claim in regard to the incident as of July 20, 2015, almost two months past the 90-day filing deadline (encl. Q1).
- On July 13, 2015, a search of Office of Court Administration records yielded no previous criminal convictions for § 87(2)(b). In regard to this arrest, the case remains open and the next court date is scheduled for § 87(2)(b) (encl. P1-P6).

### Civilian and Officer CCRB Histories

- There are three previous CCRB cases involving a § 87(2)(b) (encl. B6). As the mailing addresses from the previous cases did not match the one for this case and § 87(2)(b)'s birthdate is unknown, it was undeterminable if he was involved in the previous cases.
- This is the first CCRB complaint involving § 87(2)(b) (encl. B7).
- Lt. Catusco (encl. B1-B2) has been a member of the service (MOS) for 27 years and has 22 other CCRB allegations pled against him in 12 cases. In CCRB 200610115, an allegation of a threat of arrest was closed as exonerated. In CCRB 9000554, an allegation of force was substantiated for which the Board recommended charges, and the NYPD

disposition and penalty are pending. In CCRB 9000554, an allegation of force was substantiated for which the Board recommended that the MOS could not be identified.

- PO Providence (encl. B3) has been an MOS for 14 years and has 7 other CCRB allegations pled against him in 5 cases. In CCRB 200912683, allegations of discourtesy and abuse of authority (stop) were substantiated for which the Board recommended charges, and the NYPD disposition and penalty were command discipline.
- PO Marksberry (encl. B4) has been an MOS for fourteen years and has 11 other CCRB allegations pled against him in 5 cases. In CCRB 201500837, allegations of abuse of authority (refusal to provide name/shield) and discourtesy (action) were substantiated for which the Board recommended command discipline, and the NYPD disposition and penalty are pending.
- Lt. Harrington (encl. B5) has been an MOS for 19 years and has 5 other CCRB allegations pled against him in 2 cases. In CCRB 200802670, an allegation of abuse of authority (refusal to obtain medical treatment) was substantiated for which the Board recommended command discipline and the NYPD concurred.

#### **Additional Witnesses**

- § 87(2)(b) named his friends § 87(2)(b) and § 87(2)(b) as being present during the incident, but had no last names or contact information for them. § 87(2)(b) also knew no last names for them, and provided their Facebook usernames. On March 26, 2015, a subpoena was sent to Facebook for the legal names and contact information for the usernames provided by § 87(2)(b). On April 7, 2015, the Law Enforcement Response Team responded via email (encl. S19) and said that under the Stored Communications Act, Facebook may only be compelled to disclose the subpoenaed information pursuant to a search warrant issued on probable cause. On March 27, 2015, the undersigned investigator messaged § 87(2)(b) and § 87(2)(b) with a Facebook account containing only her name, and received no response. Without last names or contact information, these individuals could not be identified and contacted for statements.
- The TD 30 Prisoner Holding Pen Roster for the date of the incident (encl. O9-O11) along with a search of the NYPD Booking and Complaint System for arraignment details identified the following individuals as being present at the TD 30 stationhouse at the time that § 87(2)(b) was present:
  - § 87(2)(b) On March 30, 2015, a LexisNexis search for him was conducted. Between March 31, 2015, and May 6, 2015, all the required contact attempts as per agency standards were made to him to every known number, mailing and email address. On May 8, 2015, he provided a phone statement (encl. I1) and said he needed to call back to schedule a CCRB interview. On May 11, 2015, an online search of the New York City Department of Corrections Inmate Lookup Service (NYC DOC ILS) revealed that he was not incarcerated. To date, he has not contacted the undersigned investigator.
  - § 87(2)(b) On March 30, 2015, a LexisNexis search yielded negative results for him. Between March 20, 2015, and May 8, 2015, all the required contact attempts as per agency standards were made to him to every known number (one) and mailing address (no known email address). On May 11, 2015, an online search of the NYC DOC ILS revealed that he was not incarcerated. To date, he

- has not contacted the undersigned investigator.
- § 87(2)(b) On April 24, 2015, a LexisNexis search was conducted and the results were too numerous to narrow down due to the commonality of his name. On April 24, 2015, and May 1, 2015, two please call letters were mailed to him and they were not returned by the United States Postal Service (USPS). No phone numbers or email addresses are known for him as of this writing. On May 11, 2015, an online search of the NYC DOC ILS revealed that he was not incarcerated. To date, he has not contacted the undersigned investigator.
  - § 87(2)(b) On April 24, 2015, a LexisNexis search yielded negative results for him. On April 24, 2015, and May 1, 2015, two please call letters were mailed to him and they were not returned by the USPS. No phone numbers or email addresses are known for him as of this writing. On May 11, 2015, an online search of the NYC DOC ILS revealed that he was not incarcerated. To date, he has not contacted the undersigned investigator.
  - § 87(2)(b) On April 24, 2015, the undersigned investigator contacted him via telephone. He provided a phone statement (encl. H1) and scheduled his CCRB appointment for April 29, 2015. He did not appear for this appointment and did not call the undersigned investigator ahead of time to cancel or reschedule. Between April 29, 2015, and May 11, 2015, all the required contact attempts as per agency standards were made to him to every known number (one) and mailing address (no known email address). On May 11, 2015, an online search of the NYC DOC ILS revealed that he was not incarcerated. To date, he has not contacted the undersigned investigator.

### **Findings and Recommendations**

#### **Explanation of Subject Officer Identification**

- § 87(2)(b) could not say for certain who punched him in the face and while he thought it was Lt. Catusco, he was later told by his friends that it was PO Providence. § 87(2)(b) alleged that § 87(2)(b) was punched or pushed in the face in the stationhouse after he was brought up from the subway station floor, and alleged no punch beforehand. No interviewed officer acknowledged punching or seeing an officer punch § 87(2)(b). Thus, Allegation C has been pled against an officer.
- While it is undisputed that § 87(2)(b) was pepper sprayed, neither he nor § 87(2)(b) could say which officer did this. No interviewed officer acknowledged pepper spraying § 87(2)(b) while all witnessed its effects. PO Providence said that PO Marksberry pepper sprayed § 87(2)(b) but the video of the incident (IA 13), which seems to occur after the pepper spray is deployed given § 87(2)(b)'s shouts about his eyes, supports PO Marksberry's testimony that he was holding down § 87(2)(b)'s legs. Neither Lt. Catusco nor PO Marksberry knew which officer pepper sprayed § 87(2)(b). Thus, Allegation D has been pled against an officer.
- Lt. Harrington (encl. M1-M5) denied being present in the cell area with § 87(2)(b). In the TD 30 command log (encl. O12-O15), it is noted that Lt. Harrington conducted roll call at 3:53 p.m., approximately an hour and a half before the incident. Lt. Harrington said that he went on patrol before returning to the stationhouse, but he could

not recall what time he returned to the stationhouse and failed to bring his memo book to his CCRB interview (this report has been submitted pending its expected receipt on July 20, 2015, when he said he could fax it). Thus, he could not say where he was at the time of the incident. Lt. Harrington prepared Line-of-Duty Report § 87(2)(b) (encl. M2-M3) for Lt. Catusco in regard to the incident, and it was signed by Lt. Harrington on the date of the incident. Lt. Catusco prepared a UF 49 (encl. K4-K5) for the incident which states that he was interviewed by Lt. Harrington. Lt. Catusco's memo book (encl. K2-K3) notes that he left for the hospital at 6:15 p.m., over an hour after the incident occurred, and returned at 8:30 p.m., a half hour before he ended his tour. Given this evidence, it is likely that Lt. Harrington interviewed Lt. Catusco before the latter left for the hospital, thus placing him at the stationhouse at the time § 87(2)(b) was present. Furthermore, § 87(2)(b) (encl. E1-E8) described the officer who threatened him with the use of a Taser and pepper spray in the TD 30 stationhouse as a white male who stands 5'11" tall, has a heavyset body build, blonde or brown hair, is in his 40s or 50s and wore a white shirt. Lt. Harrington is a § 87(2)(b)-old white male who stands 5'11" tall, weighs 195 pounds, and has hazel eyes (in his interview, he said he was 6'0" tall, but wrote 5'11" on his pedigree sheet, encl. M1). The TD 30 roll call for the date and time of the incident (encl. O16-O22) shows that three other MOS, Cpt. Maria Ferina-Giacalone, Cpt. Antonio Pagan and Lt. Geoffrey Varela, were on-duty and could have been wearing white shirts. None of them match the physical description that § 87(2)(b) provided. Cpt. Ferina-Giacalone is female. Cpt. Pagan (encl. N1) is a § 87(2)(b)-old medium-skinned Hispanic male who stands 6'1" tall, weighs 225 pounds, and has black hair and brown eyes. Cpt. Pagan (encl. N2) is a § 87(2)(b)-old light-skinned Hispanic male who stands 5'9" tall, weighs 250 pounds, has black hair, brown eyes, a moustache and wears prescription glasses. Lt. Harrington said that Lt. Varela was in plainclothes at the time of the incident, and he could think of no other higher-ranking officer at the command at the time that matched the description that § 87(2)(b) provided. Given the evidence of the paperwork generated for the incident, the description that § 87(2)(b) provided of the officer who threatened him with force and the notations in the command log, Allegation K has been pled against Lt. Harrington.

### **Allegation not Pled**

- **Force:** § 87(2)(b) (encl. F1-F8) alleged that in the stationhouse, PO Providence punched or pushed § 87(2)(b) in the face. As § 87(2)(b) did not allege this, the allegation has not been pled.
- **Force:** § 87(2)(b) alleged in his phone statement (encl. I1) that § 87(2)(b) was pepper sprayed in the cell area. As § 87(2)(b) did not allege this, this allegation has not been pled.
- **Discourtesy:** § 87(2)(b) alleged in his phone statement (encl. I1) that after § 87(2)(b) urinated in the cells, officers said, "Damn, he just peed in the cells! Fuck it, we're going to use his shit anyway [to clean it up]." As no other civilian alleged this and § 87(2)(b) did not provide a verified statement, this allegation has not been pled.

### **Allegation A: Abuse of Authority: At the Hoyt/Schermerhorn A/C/G subway station, Lt. Michael Catusco stopped § 87(2)(b)**

§ 87(2)(b) (encl. E1-E8) said that he and his friends, § 87(2)(b)

§ 87(2)(b) (last name unknown) and § 87(2)(b) (last name unknown), arrived to the Hoyt/Schermerhorn A/C/G subway station. They are subway dancers and planned on boarding the Brooklyn-bound A train to continue dancing. The group first went to the vendor located just next to the stationhouse within the subway station, and everyone bought something. § 87(2)(b) bought a water and a Poptart. The group then headed to the stairs leading to the subway platform. Before § 87(2)(b) could reach the stairs, an officer identified as Lt. Catusco grabbed § 87(2)(b)'s backpack and repeatedly said, "You said you were gonna punch me in my face right?" and then said, "Hit me." § 87(2)(b) knew Lt. Catusco was referring to an incident the day before, when his friend was arrested on a subway car by officers. § 87(2)(b) asked where his friend was taken, and an officer identified as PO Dana Davis of TD 30 refused to tell him. § 87(2)(b) remarked to § 87(2)(b) who was with him at the time, "The only reason these cops act like that is because they know we can't hit them.") In response to Lt. Catusco's comment to hit him, § 87(2)(b) said, "You know I can't hit you." He tried to ignore Lt. Catusco and walk away, but Lt. Catusco held onto the backpack. An officer identified as PO Providence tried to grab § 87(2)(b)'s arm, but he moved away before he could do this. § 87(2)(b) said, "What are y'all doing? You can't lock me up. I didn't do nothing." Lt. Catusco said, "Oh, you didn't do nothing? You're just blocking traffic. That's what you did." § 87(2)(b) asked how this was possible. PO Providence tried to grab § 87(2)(b)'s arm again and he again pulled away. He tried to pull his bag away from Lt. Catusco and run, but fell to the floor on his side because Lt. Catusco was stronger than him.

§ 87(2)(g)

§ 87(2)(b) The day before the incident, § 87(2)(b) said to § 87(2)(b) in front of Lt. Catusco and PO Davis, "The only reason why [the officers] could do whatever they want to do is because he has a badge on him or whatever." § 87(2)(b) mentioned that the officer was lucky he had a badge, and never mentioned hitting an officer in the face or commented on Lt. Catusco. On the date of the incident, Lt. Catusco was entering and exiting the stationhouse and upon seeing the group, looked at them as if he wanted to start something. An officer standing nearby remarked to the group, "Y'all know you're not supposed to be dancing, right?" although the group had not danced on the subway that day. The group walked slowly to the staircase. § 87(2)(b) had borrowed § 87(2)(b)'s green backpack and was putting money back inside after buying a water and a Poptart from the vendor when Lt. Catusco approached the group. After Lt. Catusco told § 87(2)(b) to punch him in the face, § 87(2)(b) said, "You'll find any way just to bother somebody. This is unnecessary," and "What'd I do? Why y'all doing this?" Lt. Catusco said the group was blocking traffic, which was untrue. Lt. Catusco repeated that § 87(2)(b) should hit him in the face and § 87(2)(b) said nothing. Lt. Catusco grabbed § 87(2)(b)'s hand and § 87(2)(b) moved slightly, seemingly in fear. § 87(2)(b) gave a look to § 87(2)(b) that communicated that he was about to run, and he tried to run a couple steps. Lt. Catusco did not release him. § 87(2)(b) repeated, "I didn't do nothing. Why are y'all doing this for? I'm minding my own business." § 87(2)(b) managed to get away from Lt. Catusco and ran a short distance, but could not go far before four officers brought him to the ground.

Lt. Catusco (encl. K1-K11) said that the day before the incident, when § 87(2)(b)'s friend was arrested, he said to PO Davis, "You guys better watch yourselves...hope you have eyes behind your back. We're going to snuff you and take you out." Neither Lt. Catusco nor PO Davis responded. § 87(2)(b) was not summonsed or arrested for this because he was entitled to his freedom of speech. On the date of the incident, Lt. Catusco observed from about

100 feet away the group of four of five males blocking the stairwell, which is a violation, and intended to ask them to disperse. He did not immediately recognize § 87(2)(b) and would only do so upon getting closer. After recognizing him, he said to § 87(2)(b) in sum and substance, “Did you come back here to follow up on your threat?” in reference to the interaction the day before. He could not recall telling § 87(2)(b) to punch him in the face. He asked the group to leave and everyone walked to another part of the mezzanine except § 87(2)(b) who did not move. Lt. Catusco repeated the instruction numerous times and § 87(2)(b) said, “I don’t have to leave. I don’t have to do nothing. I don’t have to listen to you.” Lt. Catusco then asked § 87(2)(b) for identification and he refused to provide it and said, “I don’t have to give you any ID.” Lt. Catusco asked § 87(2)(b) numerous times for identification, and he refused to provide it. Lt. Catusco decided to arrest § 87(2)(b) for the violations of blocking pedestrian flow and the stairwell, and no other reason. Lt. Catusco took hold of § 87(2)(b) and tried to walk him to the stationhouse. § 87(2)(b) tried to run away and Lt. Catusco restrained him by holding onto his wrist. Both § 87(2)(b) and Lt. Catusco fell to the floor and numerous other officers who included PO Providence came over to assist.

§ 87(2)(g)  
PO Providence had been observing the group stand atop the steps for a few minutes before he and Lt. Catusco approached the group together. When the others complied with Lt. Catusco’s instructions to leave, they went down the steps toward the subway platform. Lt. Catusco made no mention of § 87(2)(b) punching him in the face. Lt. Catusco grabbed either § 87(2)(b)’s arm or backpack after he refused to leave and said, “Okay, you’re not going to leave? Can I see some ID? You’re under arrest.” § 87(2)(b) ran and managed to get out of Lt. Catusco’s grasp. Lt. Catusco and PO Providence stopped him. PO Providence did not know how, but he tripped and fell over § 87(2)(b) onto the concrete floor, thereby bruising his knee. Other officers who included PO Marksberry came to assist.

PO Marksberry (encl. L1-L7) arrived to the stationhouse to end his tour when he saw Lt. Catusco and PO Providence engaged with § 87(2)(b) on the mezzanine. He could not recall if he saw Lt. Catusco and PO Providence approach. He was out of earshot of the conversation between the officers and § 87(2)(b). He had no knowledge of what led up to the interaction. In an instant, the officers and § 87(2)(b) were on the floor and he did not know if § 87(2)(b) tried to run away before this time. PO Marksberry went to assist.

The video footage of the incident (IA 13) shows the stairwell nearest to where § 87(2)(b) was apprehended at the 00:20 minute mark and the stationhouse at the 00:34 minute mark.

An officer must have reasonable suspicion that criminal activity is afoot to justify a stop involving the physical seizure of an individual, which is defined as a significant interruption with an individual’s liberty of movement, People v. De Bour, 386 N.Y.S.2d 375 (Ct. of Appeals 1976) (encl. A1-A11).

§ 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]



§ 87(2)(g)

[REDACTED]

**Allegation B: Abuse of Authority: At the Hoyt/Schermerhorn A/C/G subway station, Lt. Michael Catusco threatened to arrest** § 87(2)(b)

§ 87(2)(b) (encl. F1-F8) said that when § 87(2)(b) was trying to pull away from Lt. Catusco and PO Providence, he said to them, “Y’all cannot do this. This is not right. § 87(2)(b) didn’t do nothing to y’all.” Lt. Catusco then tried to arrest § 87(2)(b) by saying to another officer who was coming to assist, § 87(2)(b) too. This one, too.” Ultimately, no officer stopped or arrested § 87(2)(b) § 87(2)(b) (encl. E1-E8) § 87(2)(g) he said that Lt. Catusco mentioned to the officer he was speaking to that § 87(2)(b) was present the day before as well.

Lt. Catusco (encl. K1-K11) initially said that when he instructed the group to disperse, everyone except § 87(2)(b) complied. When asked about § 87(2)(b) he then said that § 87(2)(b) also initially refused to comply and stood next to § 87(2)(b) Lt. Catusco said to § 87(2)(b) “If you don’t leave, you guys are going to get locked up,” at which time § 87(2)(b) walked away to another part of the mezzanine.

PO Providence (encl. J1-J28) said he did not think he saw § 87(2)(b) do anything for which he could be arrested. He did not hear Lt. Catusco say anything in regard to arresting § 87(2)(b)

Patrol Guide (PG) Procedure 208-01 (encl. A12-13) states that for an arrest without a warrant, an officer must have reasonable cause to believe that an offense in his presence or a crime had been committed. A threat of arrest based on personal pique and without any reasonable basis is abuse of authority, Police v. Seligson (OATH Index No. 1621/00) (encl. A14-A31).

§ 87(2)(g)

**Allegation C: Force: At the Hoyt/Schermerhorn A/C/G subway station, an officer used physical force against § 87(2)(b)**

**Allegation D: Force: At the Hoyt/Schermerhorn A/C/G subway station, an officer used pepper spray against § 87(2)(b)**

§ 87(2)(b) (encl. E1-E8) said that after he attempted to run from officers (addressed in Allegation A) and when he was on the floor, he felt a punch to the right side of his face directly before or after he was pepper sprayed. While he was uncertain about the timing, he thought this occurred directly before being pepper sprayed. When he was on the ground, an officer tried to put shackles on his legs and he moved and stretched his legs apart to prevent this. Before he could try to resist further or fight back, he was pepper sprayed and could not say by whom. He did not say that he bit Lt. Catusco. § 87(2)(b) (encl. F1-F8) said that he saw an officer make a motion indicative of pepper spraying § 87(2)(b) but could not say which officer did this. He did not allege that an officer punched § 87(2)(b) until later in the stationhouse (addressed in Allegation not Pleaded section).

No interviewed officer acknowledged punching § 87(2)(b) in the face or seeing another officer do this. PO Providence (encl. J1-J28) said that when § 87(2)(b) was on the ground, he resisted by punching, kicking and biting. He heard Lt. Catusco exclaim, “Ow, he just bit me!” but did not see this occur. He later learned that § 87(2)(b) bit Lt. Catusco on both hands. PO Marksberry pepper sprayed § 87(2)(b) after which time the officers were able to handcuff him. PO Providence prepared Arrest Report § 87(2)(b) (encl. J8-J12) and Complaint § 87(2)(b) (encl. J12-J16) wherein it states that § 87(2)(b) resisted arrest and physically assaulted Lt. Catusco by biting him on the left and right hands. PO Providence testified in a criminal court complaint (encl. J22-J23) that § 87(2)(b) attempted to run away, kicked and punched him and Lt. Catusco, and bit Lt. Catusco’s hands. PO Providence stated in AIDED § 87(2)(b) (encl. J17-J21) that Lt. Catusco was bitten on both hands when effecting a lawful arrest.

PO Marksberry (encl. L1-L7) said that he held onto § 87(2)(b)’s legs during the struggle. § 87(2)(b) wriggled around on the floor and lay on his arms to avoid arrest. He knew pepper spray was deployed because he tasted it at some point, but did not see who did this and he did not do this. After the incident, he learned that § 87(2)(b) bit Lt. Catusco.

Lt. Catusco (encl. K1-K11) said that when § 87(2)(b) was on the ground, he tried to pull his hands from underneath his body to handcuff him, and § 87(2)(b) bit both of his hands, puncturing the skin. After Lt. Catusco’s second hand was bitten, § 87(2)(b) was pepper sprayed and he did not know by whom. Lt. Catusco later went to § 87(2)(b) for his injuries. He was diagnosed with human bites to his hands (encl. K6).

Lt. Harrington (encl. M1-M5) denied any interaction with § 87(2)(b). He generated a Line-of-Duty Injury Report § 87(2)(b) (encl. M2-M3) wherein he stated the following: He interviewed Lt. Catusco, who said he suffered injuries from bites by § 87(2)(b) when

effecting his lawful arrest. Lt. Catusco had minor injuries including lacerations, puncture wounds and pain from the bites.

An officer may only use that amount of force necessary to overcome resistance, PG Procedure 203-11 (encl. A32-A33). The use of O.C. pepper spray constitutes physical force and may be used for self-defense, PG Procedure 212-95 (encl. A34-A37).

§ 87(2)(g)

**Allegation E: Force: At the Hoyt/Schermerhorn A/C/G subway station, PO Lyndon Providence used a chokehold against** § 87(2)(b)

**Allegation F: Force: At the Hoyt/Schermerhorn A/C/G subway station, PO Lyndon Providence restricted** § 87(2)(b) **s breathing.**

§ 87(2)(b) (encl. E1-E8) alleged that when he was brought to a standing position from the subway station floor, PO Providence put one arm (which unknown) around his neck and choked him as he held the handcuffs with his other hand. § 87(2)(b) told PO Providence that he was having trouble breathing. PO Providence kept his arm around § 87(2)(b) s neck as he escorted him fifteen to twenty feet to the TD 30 stationhouse door. Once inside, PO Providence removed his arm from § 87(2)(b) s neck. § 87(2)(b) (encl. F1-F8) corroborated § 87(2)(b) s testimony.

PO Providence (encl. J1-J28) said that he escorted § 87(2)(b) to the stationhouse by holding onto his arm. § 87(2)(b) s breathing was never restricted and PO Providence never applied pressure to his neck. PO Providence never placed § 87(2)(b) in any kind of chokehold such that his arm was around his neck. § 87(2)(b) never complained that he could not breathe. Upon viewing the video footage for the incident, PO Providence denied having his arm around § 87(2)(b) s neck and said that it was instead around his chest area. He demonstrated the maneuver in his CCRB interview on his legal representative, Ms. Florence Friedman, Esq., to show that it was on top of § 87(2)(b) s chest and it only seemed to be around his neck due to the close proximity of the areas.

Lt. Catusco (encl. K1-K11) said that he was unaware who lifted § 87(2)(b) from the floor and thought PO Providence escorted him to the stationhouse, but was uncertain. Lt. Catusco never saw an officer apply pressure to § 87(2)(b) s neck, wrap an arm around his neck or place him in a chokehold. Upon viewing the video footage, he identified PO Providence as the officer placing his arm around § 87(2)(b) s neck. He could not recall this occurring.

PO Marksberry (encl. L1-L7) could not recall how PO Providence escorted § 87(2)(b) to the stationhouse. He could not recall § 87(2)(b) complaining at the time that he could not breathe and did not see PO Providence put pressure on § 87(2)(b) s neck. He could not recall § 87(2)(b) being placed in a chokehold. Upon viewing the video, he identified himself as the officer to the left of frame turned away from the action of PO Providence placing his arm around § 87(2)(b) s neck.

The video footage of the incident (IA 13) contains the following: At the 00:26 minute

mark, PO Providence places his left arm around § 87(2)(b)'s neck in a chokehold and begins to walk with him. The camera is out of focus for approximately five seconds. At 00:33, PO Providence is seen with his left arm still around § 87(2)(b)'s neck at the door of the stationhouse. At 00:36, PO Providence opens the door to the stationhouse and the video ends.

When effecting an arrest, an officer may only use the amount of force necessary to overcome resistance and officers are prohibited from using chokeholds, PG Procedure 203-11 (encl. A32-33).

§ 87(2)(g)  
[REDACTED]

**Allegation G: Force: At the Hoyt/Schermerhorn A/C/G subway station, PO Lyndon Providence used physical force against § 87(2)(b)**

§ 87(2)(b) (encl. E-E8) alleged that when PO Providence escorted him to the door of the TD 30 stationhouse, he used his body to open the door. § 87(2)(b) (encl. F1-F8) corroborated this and said that § 87(2)(b)'s face made contact with the door.

PO Providence (encl. J1-J28) denied this. On March 20, 2015, the CCRB field team conducted fieldwork to the TD 30 stationhouse and took a photograph of the door (encl. C1) which only opens outward. The video footage of the incident (IA13) shows that at the 00:36 minute mark, just before the video ends, PO Providence opened the door outward to bring § 87(2)(b) inside.

§ 87(2)(g)  
[REDACTED]

**Allegation H: At the Transit District 30 stationhouse, PO Lyndon Providence used physical force against § 87(2)(b)**

**Allegation I: Discourtesy: At the Transit District 30 stationhouse, PO Lyndon Providence spoke discourteously to § 87(2)(b)**

§ 87(2)(b) (encl. E1-E8) alleged that after PO Providence washed his eyes out, he brought § 87(2)(b) to a bench in the stationhouse. § 87(2)(b) was yelling due to the pain that being pepper sprayed was still causing in his eyes, and PO Providence said, "Suck it up." This made § 87(2)(b) angry, so he tried to stand up from the bench. PO Providence pressed his knee against § 87(2)(b)'s groin area, which caused him pain. PO Providence kept his knee in place for about a minute and told § 87(2)(b) to calm down. § 87(2)(b) told PO Providence to get off of him and said, "That's gay." PO Providence responded, "Oh yeah, we're going to show you something gay."

PO Providence (encl. J1-J28) denied making any contact with § 87(2)(b)'s groin area and could not recall the conversation in which the aforementioned comments were made. No interviewed officer acknowledged witnessing this.

§ 87(2)(g)  
[REDACTED]

§ 87(2)(g)

**Allegation J: Abuse of Authority: At the Transit District 30 stationhouse, PO Lyndon Providence damaged § 87(2)(b)'s property.**

It is undisputed that § 87(2)(b) (encl. E1-E8) urinated in the cell and that PO Providence (encl. J1-J28) used § 87(2)(b)'s sweater to clean it from the floor. PO Providence said this was not protocol, but what he chose to do. When asked why he used § 87(2)(b)'s sweater as opposed to something else, PO Providence asked if he should have used § 87(2)(b)'s coat instead. The investigator put forth the suggestion of a mop and PO Providence said the stationhouse is not equipped with a mop or anything else with which he could have cleaned the cell, as prisoners never urinate in them. Thus, he used § 87(2)(b)'s sweater because he had nothing else to use. He initially said that § 87(2)(b) did not want the sweater that he chose to use to clean the urine, but later said that he had no conversation with § 87(2)(b) in regard to him not wanting the sweater.

Part of the mission of the New York City Police Department is to protect the property of all citizens of New York City by treating every citizen with courtesy, professionalism and respect, PG Procedure 200-02 (encl. A38).

§ 87(2)(g)

**Allegation K: Abuse of Authority: At the Transit District 30 stationhouse, PO Lyndon Providence threatened § 87(2)(b) with the use of force.**

§ 87(2)(b) (encl. E1-E8) said that as PO Providence used the sweater to clean the urine from the floor and was dragging it out of the cell with his foot, an officer identified as Lt. Harrington said, "Oh, watch your back 'cause he might try to sneak up on you." PO Providence looked at § 87(2)(b) and said, "Oh, he know[s] better 'cause I'm not like these other cops. I'll punch him in the nose 'cause that's what I'm aiming for." § 87(2)(b) (encl. G1-G6) is an independent witness who was identified from the command log (encl. O12-O15) as another prisoner in the TD 30 stationhouse cells at the same time as § 87(2)(b) (he did not know § 87(2)(b)'s name). He said that § 87(2)(b) asked to use the restroom and was not allowed to do so. § 87(2)(b) said that he was going to urinate in the cell because he heard officers, who were seemingly amused, discuss this and how they planned to leave § 87(2)(b) in there with the urine. He did not see an officer enter the cell and did not allege the threat of force. In § 87(2)(b)'s phone statement (encl. H1) and § 87(2)(b)'s phone statement (encl. I1), they did not allege this threat of force. § 87(2)(b) said that no officer brought a backpack to the cell. § 87(2)(b) said an officer did bring a backpack in the cell and said they were going to use § 87(2)(b)'s belongings to clean up the urine.

PO Providence (encl. J1-J28) said that after he cleaned the urine with § 87(2)(b)'s sweater, no officer commented that he should be careful lest § 87(2)(b) snuck up on him and denied threatening to punch § 87(2)(b) in the nose. PO

Marksberry (encl. L1-L7) said that he could not recall any officer commenting that § 87(2)(b) may sneak up on an officer and PO Providence never threatened to punch § 87(2)(b) in the nose. Lt. Harrington (encl. M1-M5) said that he was never in the cell area with § 87(2)(b). Lt. Catusco (encl. K1-K11) said that after he was bitten, he went to the bathroom to treat the injury and then to the hospital. He denied being in the cell area with § 87(2)(b) and while he later heard about § 87(2)(b) urinating in the cell, he did not witness this.

§ 87(2)(g)

**Allegation L: Abuse of Authority: Lt. Timothy Harrington threatened § 87(2)(b) with the use of force.**

§ 87(2)(b) (encl. E1-E8) said that after Lt. Harrington warned PO Providence to be careful lest § 87(2)(b) sneak up on him and after PO Providence threatened to punch him in the nose, he said, “I don’t need to attack you when you’re not looking like how y’all do.” § 87(2)(b) and PO Providence continued arguing and they faced each other with the cell bars between them. § 87(2)(b)’s eyes still burned from the pepper spray, and he attempted to spit at PO Providence through the bars, but missed and the spit landed on PO Marksberry. Lt. Harrington said, “Oh, you want to spit on my officers? Go get the Taser and go get the mace. I’ll mace him again.” § 87(2)(b) (encl. H1) corroborated this in his phone statement and added that § 87(2)(b) screamed in reply, “No, no.” Lt. Harrington then said, “Alright, alright.” § 87(2)(b) thought § 87(2)(b) was threatened with the Taser and the pepper spray because § 87(2)(b) was being aggressive and rebellious, spat on PO Marksberry and tried to push officers in his resistance. § 87(2)(b) (encl. G1-G6) did not allege this and could not recall any officer mentioning pepper spray after § 87(2)(b) spat on PO Marksberry. In § 87(2)(b)’s phone statement (encl. I1), he said that he heard an officer ask another officer to pass the pepper spray to him, and thought it was used on § 87(2)(b) because of his reaction, but did not see this.

Lt. Harrington (encl. M1-M5) denied being in the cell area with § 87(2)(b). PO Marksberry (encl. L1-L7) said that he exited the cell area after he was spat upon, and did not hear anything that transpired afterward. He did not hear any officer threaten to use the Taser or pepper spray on § 87(2)(b). This allegation was not addressed in the interview with PO Providence (encl. J1-J28).

Pepper spray may be used to protect an officer or another from the use of unlawful force, PG Procedure 212-95 (encl. A34-A37). An officer may use a conducted energy device (CED; commonly known as Tasers) against a person who exhibits active physical aggression and to prevent individuals from physically injuring others, PG Procedure 212-117 (encl. A40-A47).

§ 87(2)(g)

§ 87(2)(g)

**Allegation M: Discourtesy: At the Transit District 30 stationhouse, PO Thomas Marksberry spoke discourteously to § 87(2)(b)**

§ 87(2)(b) (encl. G1-G6) alleged that when § 87(2)(b) spat on PO Marksberry, PO Marksberry said, “That fucker just spit on me,” and “Yeah, he fucking just spit on me.” § 87(2)(b) (encl. E1-E8) did not allege this. § 87(2)(b) said in his phone statement (encl. H1) that he could not recall any officer cursing. In § 87(2)(b)'s phone statement (encl. I1), he did not allege this.

PO Marksberry (encl. L1-L7) denied making these statements. When the alleged statement were read to PO Providence (encl. J1-J28), he said that this was verbatim what PO Marksberry said.

Officers are charged with being courteous and respectful in their interactions with civilians, PG Procedure 203-09 (encl. A48).

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

Pod: 8

Investigator:	_____	_____	_____
	Signature	Print	Date

Pod Leader:	_____	_____	_____
	Title/Signature	Print	Date

Attorney:	_____	_____	_____
	Title/Signature	Print	Date